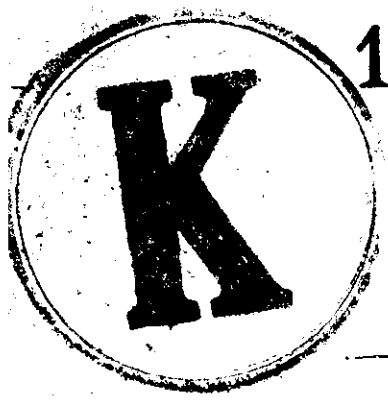

1951.

File No. B.P.T.(Op) 51

Legal Department-
E - I **BRANCH**

Subject:— Opinions under the Bombay Public Trust Act, 1950.

(P 25/5)

File No. B. P. T. (Opinions)/51

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C O N T E N T S.

Legal Department File No. B.P.T. (Opinion-) 51.

Sr. No.	B. P./C. No.	Subject	Page.
		Opinions under the Bombay Public Trust act 1950.	1
1.	11 2/1/51.	Amath fund and Jwari fund have become impossible or impracticable of performance so as to need a diversion of these funds to an educational purpose.	1.
2.	281 5/1/51 -	Shri Bilkarni may file a suit against the Trustee after obtaining the Collector's Consent under section 92 of Civil Procedure Code.	3.
3.	1262 19-1-51.	The Govt. of B'bay cannot confine to assume responsibility for Direct management of such temples and religious foundations.	5.
4.	1374 22-1-51.	Recognition of acts of life saving by award of a medal would amount to an object of general public utility.	7.
5.	4947 28-3-51.	relate to the management of certain charitable properties at Abu Road	9.
6.	5468 5-4-51.	The T.D. which was executed by the Rajasahib on the eve of merger was recognised by Govt. on the footing that it was a public trust.	11.
7.	7196 7-5-51.	Whether the sanction is necessary of the District Courtto hand over the funds.	13.
8.	7749 18-5-51.	Of none of the reliefs sought by the Plaintiffs fall within section 92 of the civil Procedure Code.	15.
9.	10019 23-6-51.	Section 7(1) of the Baroda Public Institutions Act empowers the collector to take over management of a public Trust.	17-19.
10.	10394 26-6-51.	Amath fund and Jwari fund had not become impossible or impracticable of performance so as to need a diversion of the funds to an educational fund purpose.	21.
11.	10243 11-7-51.	Whether the B'bay Public Trusts Act 1950 will be available to Public Trusts.	23.
		Religious and Charitable Trust Funds Merged stock area -	

C O N T E N T .

Legal Department File No. B.F.T. (Opinions) & 51.

Sr. No.	B. I./D. No.	Subject	Pages.
13.	14147 4/9/51.	Whether the Bihar Public Trusts Act 1950 will be applicable to the Public Trusts from 15th October 1951.	31.
14.	~~14~~ 14575 12/9/51.	Whether the objection to the B.D. proposal for the refund of the amount to the trustees of the Institution concerned on behalf of the Institution, after ascertaining that the lands acquired have been used for works of public utility.	33.
15.	16787 20/10/51.	The Bihar public Trusts Act 1950 will be applied to the Public Trusts from 2nd January 52.	35.
16.		The Provision of the Act relied on by the several applicants in support of them applications to exemption appears in provision (1) to sub-section 4 of Section (1)	37-71.

N.V.D.
13/6
5c.

Office of the E.L.A.

It is difficult to say that the objects of the Anath Fund and Jvari Fund have become impossible or impracticable of performance so as to need a diversion of the funds to an educational purpose. The modes of utilising the other three funds are not clearly stated, as it appears that it willbe possible to divert these funds to educational purpose after obtaining the sanction of the Court.

2. Under section 56 of the Bombay Public Trusts Act, 1950 it is open to the Court to apply the trust funds cypress if it is not in public interest expedient, practicable, desirable, necessary or proper to carry out wholly or partially the original object for which the public trust was created. After that Act comes into force the Charity Commissioner may be requested to apply to the Court for directions and if the Court so directs all the funds may be diverted to the educational purposes as proposed.

Sd/-

Remembrancer of Legal Affairs.

U.R. to E.D. No. 11 , dated the 2nd January 1951.

N.V.D.
13/6
4c.

Legal Department.

It is not possible for Government to take over the management. However, Shri Kulkarni may, if he is so advised, file a suit against the present Trustee after obtaining the Collector's consent under section 92 of the Civil Procedure Code. In case he chooses to file a suit after the Bombay Public Trust Act, 1950 comes into force he may apply to the Charity Commissioner for his consent under section 51 of the Bombay Public Trusts Act.

Sd/-

Secretary to Government.

U.R. to R.D. No. 231, dated the 5th January 1951.

N.V.D.
13/6
4c.

Legal Department.

The Government of Bombay cannot continue to assume responsibility for direct management of such temples and religious foundations. The Collector should select some local people (if necessary in consultation with the Rajasaheb) who would be prepared to act as trustees of the temples in question. The Collector may, after selecting suitable persons to act as trustees, with the help of the District Government Pleader, get a draft scheme prepared, providing for the mode of succession to the office of the trustees and then move the Charity Commissioner for instituting a suit in the District Court, Kolaba for getting the scheme sanctioned by it. Government should, however, consider whether some annual cash allowance can be sanctioned for the management of the temples by the trustees as these temples do not have sufficient income.

d/-

Secretary to Government.

U.D. TO R.D. No. 1262 dated the 19th January 1951.

N.V.D.
13/6
40.

Office of the P.L.A.

Recognition of acts of life-saving by award of a medal would amount to an object of general public utility. It will, therefore, be possible for Government to make an endowment of the amount under the Charitable Endowments Act, 1890 and frame a scheme for its administration through a Committee of management as suggested by the donor. However, it is a matter for Government's consideration whether for a small sum of Rs. 5000/- Government should lend its machinery and undertake the trouble merely for perpetuating the name of an individual.

Sd/-

Remembrancer of Legal Affairs.

W.P. to H.D. No. 1374 dated 22nd January 1951.

K.V.D.
13/3
4c.

Legal Department.

These papers relate to the management of certain charitable properties at Abu Road. The facts of the case are fully stated in the judgment of the District Judge, Sirohi State, dated the 11th December 1945 at p.207 of File 72. It appears that, in view of the judgment the Sirohi State took over possession of that property consisting of six quarters at Abu Road which are given on rent of Rs.90 per mensem. Since the order of the Sirohi State the property is being managed by the Mamlatdar of Abu Road. The balance of rent amounts now to Rs.3,467-4-0 which is lying in the suspense account at the Sub-Treasury at Abu Road. The judgment of the District Judge referred to above provided that the Sirohi State Council should draw up a scheme so that the property and the income might be utilised for charitable and philanthropic purposes. It does not appear that any scheme has so far been prepared for the utilisation of the property and its income. The Sirohi State Council in its order No.89 dated 6th March 1946, however, had decided that the property should be disposed of in accordance with the scheme prepared by Shri Onkar Vaniji for charitable and philanthropic purposes. No scheme, however, has been drawn up on the advice of the Vaniji. It also appears that the Vaniji was compelled to leave Sirohi State in 1948 and is at present staying at Ajmer. The Collector has sought the orders of Government in the F.D. as to how the property should be managed in the future.

2. From the judgment of the District Judge, Sirohi State, it appears that Government was to frame a scheme for the utilisation of the property and its income for charitable and philanthropic purposes. It is usually not the function of the State Government to frame such schemes except under the provisions of the Charitable Endowments Act, 1890. Besides, the judgment does not mention any

specific.....

M.V.D.
13/6
46.

ecific object for which the property was to be utilised.

The best course in the circumstances would be to authorise the Collector to file a suit under section 92 of the Civil Procedure Code in the District ~~xxxxxxx~~ court, Mehsana, for directions. The Collector in the suit may suggest that, having regard to the circumstances of the case, the Government may be authorised to sell the property and vest the funds (including the amount of accumulate rents) in the Treasurer of Charitable Endowments under the provisions of the Charitable Endowments Act, 1890, for some educational or other charitable purpose, preferably at Abu, such as scholarships at the schools there.

sd/-

Additional Secretary to Government.

U.R.to R.D. No.4947 dated the 28th March 1951.

N.V.D.
15/6
4c.

Legal Department.

The answer suggested in the note of the Charity Commissioner is suitable. The trust deed which was executed by the Rajasaheb on the eve of merger was recognised by Government on the footing that it was a public trust. As the Bombay Public Trust's Act, 1950, will soon be applicable to the trust, it is not necessary to take action under the Bombay Public Trusts Registration Act, 1935.

d/-

Secretary to Government.

U.O. to P.D. No. 5468, dated the 5th April 1951.

N.V.D.
13/6
4c.

Local Department.

There is no objection to hand over the funds to the District Local Board, Banas Kantha, upon the same trusts and conditions as originally imposed. However if it is proposed to apply the same cy-pres(i.e. direct them for any other charitable purpose), it will be necessary to obtain the sanction of the District Court.

2. The Bombay Public Trusts Act 1950 has not yet been made applicable to the public trusts.

Sd/-

Additional Secretary to Government.

M.V. to R.D. No. 7196 dated, the 7th May 1951.

M.V.D.
13/6
4c.

Legal Department.

If some of the reliefs sought by the plaintiffs fall within section 92 of the Civil Procedure Code, sanction is necessary and it should be granted.

In the present case none of the prayers as drafted contains any relief falling under section 92. However, prayer (c) if properly drafted may contain relief falling under section 92 and sanction may be granted after the plaint is suitably amended. Amended.

Sd/-

Additional Secretary to Government.

N.P. to P.D. No. 7749, dated the 16th May 1951.

N.V.D.
13/6
4c.

Office of the P.L.A.

Section 7(1) of the Baroda Public Institutions Act empowers the Collector to take over management of a public trust if he is satisfied that the performance of specific purpose for which the trust is created has become impossible. The Subha (Collector) under that provision had taken over the management of a Mohammedan Public Trust at Nandva known as BABA PYARA PIR TAN. The Mujawar of the Piractan appealed against that order, but that appeal was rejected by the Baroda tate authorities. He thereafter filed a civil suit in the Baroda District Court, and that Court issued an injunction staying the execution of the order of the Subha. The suit was, however, later on withdrawn. The Mujawar has now approached the Collector with the request that the management be handed back to him. Under section 7(2) of the Baroda Public Institutions Act the Collector has power to release control over a trust the management of which had been undertaken by him. In the present case the Collector says that the Mujavar is incompetent and that the institution should continue to be managed by the Government. It is, however, reported by the Collector that due to the injuction issued by the District Court cimplete charge of the institution has not been taken over by him. The Collector has recommended to the R.D. that in view of the passing of the Bombay Public Trusts Act, 1950, papers of the case may be transferred to the Charity Commissioner for doing the needful in the matter. R.D. has sent the papers to L.D. for necessary action.

2. The Collector's proposal for the transfer of papers to the Charity Commissioner is based on a misconception of the scope of the Bombay Public Trusts Act, 1950, and the powers and functions of the Charity Commissioner thereund The Baroda Public Institutions Act, still continues in force and will only cease to apply after the Bombay Public Trust Act is made applicable by Government to public trusts. It

N.V.D.
13/6

was intended to apply the Bombay Act to Public trusts was from 16th July 1951; but that date, owing to some administrative difficulties, is likely to be postponed by two or three months. Even after the application of the Bombay Act to public trusts the management will validly continue with the Collector till he is divested of his responsibility by the District Court by a suit properly instituted for the purpose. As the Baroda Act is still in force, the Collector can, in virtue of his powers under section 7(1) of that Act, assume a full management, or if it is thought advisable that the Pirasatan should be handed over to the Mujavar, the Collector can do so under section 7(2) of that Act. The position of this Pirasatan is on a par with that of many other public trusts taken over for management by the revenue authorities in Baroda under section 7(1) of the Baroda Act. If Government desires to divest itself of the responsibilities of the management of the Pirasatan, the Collector or any two persons interested in the Trust may move the District Court under section 92 and 93 of the Civil Procedure to frame a scheme for its management and to appoint trustees to whom the management may be handed over. After the Bombay Public Trusts Act, 1950, is applied to public trusts, a suit of that nature can be filed in the Civil Court after obtaining the consent of the Charity Commissioner. There is nothing in the Bombay Public Trusts Act, 1950, by reason of which the management of such trust can be assumed by the Charity Commissioner.

3. The papers are, therefore, being returned to R.D. for taking such action as they deem fit in the light of the legal position explained above.

-d/-

Remembrancer of Legal Affairs.

U.P. to R.D. No. 10019, dated 23rd June 1951.

N.V.D.
13/6
4c.

Legal Department.

The P.L.A. in an earlier opinion had pointed out that the objects of the Anath Fund and Jewari Fund had not become impossible or impracticable of performance so as to need a diversion of the x funds to an educational purpose. Information now supplied by the Mamlatdar also does not show that the other three funds were intended for an educational purpose. All the five funds appear to be clearly trust funds. It is doubtful if the District Court, if moved, would agree to divert the funds for an educational purpose or to an educational institution at Laxmeshwar on the principle of cy-pres. However, if Government have no objection to the money being diverted to any educational institution at Laxmeshwar, they may advise the local persons to apply to the Collector for sanction to file a suit under xx section 92 of the Civil Procedure Code for the diversion of the funds as proposed. Government may not object to the suit and leave the matter to the decision of the Court. Such a suit after the Bombay Public Trusts Act, 1950, is applied by Government to public trusts will have to be filed with the consent of the Charity Commissioner. It may be mentioned that the Act is not likely to be applied till October next.

sd/-

Additional Secretary to Government.

U.D.to N.D. No. 10394 dated 30th June 1951.

N.V.D.
13/6
40.

Legal Department.

The Bombay Public Trusts Act, 1950 will be made applicable to public trusts from the 15th October 1951. There is no provision in that Act for Government management through a Committee. It will, therefore, be advisable to restore the management to Shri Trikam Panchoo, the trustee on condition that he will appoint the members of this proposed committee as his co-trustees. This would be feasible under section 7(2) of the Baroda Public Institutions Act which provedes for release of management by the Cube. The Baroda Act, is still in force and will cease to have effect only after the Bombay Public Trust Act, 1950, is applied by State Government to public trusts.

Sd/-

Additional Secretary to Government.

U.O. to R.D. No. 19943 dated the 14th July 1951.

N.V.D.
13/6
4c

Religious and Charitable Trust Funds.
Merged States Areas
Utilisation and management of -

GOVERNMENT OF BOMBAY,
Revenue Department,
Circular No.9650/49.
Bombay Castle, August 1951.

Read G.C., R.& F.D.No.8475/46 dated 15-1-1951.

Circular of Government.

After scrutinising the statements submitted by the Collectors with reference to G.C., R.D.No.7240/33 dated 20-9-1949, so far as the trust funds for religious and charitable purposes are concerned, Government considers that it would not be practicable to dispose of them in the manner recommended by the Collectors. The best course for the Collectors would be to prepare separate taluka-wise statements of these religious and charitable funds and properties classifying them as follows :-

i) Where there is only an earmarking of Government funds and properties for a particular purpose;

ii) where the fund and property is established partly with Government funds and partly with public contributions; and

iii) where the fund and property is established wholly with public contributions.

As regards funds held for charitable purposes falling under classes (i) and (ii), it might be possible to vest the funds in the Treasurer of charitable endowments, while those funds held for charitable purposes falling in class (iii) it may become necessary to apply to Courts for framing schemes. As regards religious endowment funds falling in class (i) they can be transferred to Committees or Trustees of religious ~~endowments~~ clauses (ii) and (iii) it may be necessary to approach the District Courts for framing schemes.

N.V.D.
13/6
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2. In view of the assurances given by the tate Government in regard to the disposal of these funds and the considerable local feeling which exists in the matter, the Collectors are advised to make enquiries regarding each fund on the spot andwith reference to the documents constituting or relating to each fund separately and to put up proposals for their disposal if necessary in consultation with District Government Pleaders concerned. The proposals should set out a short history of each fund and should also be accompanied by a copy of the relevant trust deeds or other instruments creating the trusts or endowment.

3. The general policy to be followed in these cases should be to apply to Government in the administrative department concerned so far as charitable funds are concerned, for vesting them in the Treasurer of Charitable Endowments and for forming a scheme under the Charitable Endowments Act, 1890. As regards religious funds, the Collectors should continue to hold them till the Assistant or Deputy Charity Commissioner for the region is appointed and then take steps in consultation with him to apply to Court for the appointment of trustees under the Bombay Public Trusts Act, 1950 and transfer of the funds to them. As regards religious or charitable institutions or funds taken over under the actual management of Government by virtue of statutory orders of the Ex-State Governments like Baroda, Kolhapur, and Sawantwadi where there were special enactments for the xxx-purpose a statement setting out the history of each such trust together with a copy of the relevant trust deeds, orders and other documents should be furnished along with proposals, if any, for the appointment of trustees and transfer of the trust property to them.

By order of the Governor of Bombay,

Secretary to Government.

N.V.D.
13/6
4c.

P.T.C.

To

All Collectors,

The A.G.

The Charity Commissioner,

The P. & T.D.

The F.D.

The L.L.

All other departments of the Secretariat (except S.D.)

N.V.D.
13/6
4c.

Legal Department.

The Bombay Public Trusts Act, 1950 will be applied to the public trusts from 15th October 1951. This Department cannot, therefore, issue the orders. As no legal question is involved it is not for this Department to advise, whether the R.D. or the L.S.G.& I.H.D. should issue the orders. If necessary, the question may be referred to the Chief Secretary.

Sd/-

Additional Secretary to Government.

R.D. to L.S.G. & P.H.D.No. 14147, dated the 4th September 1951.

N.V.D.
13/6
4c.

Legal Department.

There is no legal objection to the Revenue Department porposal for the refund of the amounts to the trustees of the Institutions concerned on behalf of the Institutions, after ascertaining that the lands acquired have been used for works of public utility.

d/-

Additional Secretary to Government.

U.O. to P.D., No. 14575, dated the 12th September 1951.

4c.

Legal Department.

The Bombay Public Trusts Act, 1950. will be applied to the public trusts from 2nd January, 1952. It will not therefore be proper to delay the issue of orders till then. The orders can as well be issued by the Local Self-Government Government and Public Health Department or the Revenue Department without waiting till 2nd January 1952.

Sd/-

Additional Secretary to Government

U.P. to L.S.G. & P.H.D., No. 16787, dated the 22nd October 1951.

M.V.D.
13/6
4c.

Legal Department.

The provision of the Act relied on by the several applicants in support of their applications for exemption appears in proviso (1) to sub-section (4) of section(1) which reads as follows:-

"Provided that the State Government may by like notification direct that from the date specified therein any public trust or classes of public trusts shall be exempt from the provisions of the Act."

From the words "exempt from the provisions of the Act" it appears that the proviso does not contemplate any partial exemption. If that were the intention the wording would have been "exempt from any provisions of the Act." Thus it seems that Government can either apply all the providions of the Act or grant exemption from all of them. It is, therefore, necessary to amend proviso (1) to section 1(4) so as to facilitate the grant of partial exemption.

2. Chapter VII of the Act defines the expression "charitable purposes" and contains various provisions for validation of certain transfers and bequests in favour of charity. Section 52 of the Act provides that notwithstanding anything contained in the Code of Civil Procedure, 1908, the provision of sections 92 and 93 of the said Code shall not apply to public trusts. Section 55 of the Act deals with cy-pres in extended form and section 56 with the powers of the Court in dealing with the applications under that section. Section 85(2) provided that on the application of the provisions of the Act to any public trust or class of public trusts under sub-section(4) of section(1), the provisions of the enactments specified in schedule A to the Act which applied to such trusts or classes of trusts shall cease to apply to such trusts or classes of trusts. Thus complete exemption would not

only revive the old machinery under the Civil Procedure Code and the several enactments in Chedule A but would also deprive the exempted trusts of the benefit of the cy-pres doctrine in its extended form and the general provisions contained in Chapter III of the Act. In any case it is not desirable to grant exemption from these or other similar provisions of general application. However partial exemption from the provisions of the act regarding registration, audit and contribution may be granted to the extent mentioned below:-

(a) Public trusts having small income :- It is not desirable to grant exemption from registration to any public trusts however small. Nor is it necessary to exempt any public trust from payment of registration fee and the attendant court-fee. Audit should also be obligatory in the case of all public trusts. In case of public trusts having gross annual income of Rs. 1000/- and less, the accounts may be audited by persons authorised under sec. 33(2) of the Act. However, public trusts having a gross annual income of Rs. 500/- and less may be exempted from the provisions of sec. 33(2) regarding audit, provided a statement duly signed and verified by all the trustees is filed. If the trustees of such trust find it difficult to file such a statement they may have the opinion of having their accounts audited. Public trusts having a gross annual income exceeding Rs. 1000/- should get their accounts audited necessarily by a Chartered Accountant. As regards contribution, public trusts having income of Rs. 300/- and less may be exempted from payment thereof.

(b) Public trusts in charge of the Official Trustee and Administrator General :- These public trusts need not be altogether exempted from the provisions of the Act. However, in so far as the accounts of these ~~this~~ trusts are audited by the outside Audit Department, they may be

exempted from the provision of the Act regarding Audit. The official Trustee may be required to file with the Charity Commissioner a copy of the balance-sheet and statement of account as audited by the outside audit Department. The outside audit Department should be required to submit a report directly to Charity Commissioner or the Deputy/Assistant Charity Commissioner according to the provisions of sec. 34 of the Act.

(c) Public trusts administered by or under the supervision of Government:- Public trusts administered by Government through its officials under its direct supervision merely be brought on the register without having to pay registration fee. They may, however, be exempted from the provisions of the Act regarding Audit and Accounts and Contribution. ~~xxxxx~~ Public trusts administered by private persons may be exempted from the provisions regarding audit if their accounts are being audited by outside audit department subject to the same conditions set out in (b) above.

(d) Public trusts managed by local authorities :- These public trusts may be treated on the same footing as public trusts referred to in (c) above. The same treatment may be extended to public trusts administered by tatutory Corporations.

(e) Educational Institutions receiving grant-inaid from Government:- These institutions may not be exempted from registration. As regards audit and accounts a common form acceptable both to Education Department and the Charity Organisation may be evolved and prescribed in the case of these institutions. These institutions are already exempted from payment of contribution.

(f) Cultural Societies - Historical, Literary, Scientific and other Societies registered under the Societies Registration Act, 1860 :- Such societies may be exempted from payment of contributions on the lines of trusts for secular

education . They need not be exempted from other provisions of the Act.

(g) <u>Libraries as recognised by the Government of Bombay under the Library Development Scheme</u> :- Total exemption as from payment of contribution may be granted on the lines of trusts for secular education. As their accounts are audited by outside audit department they may be exempted from the provision of the act regarding audit subject to the same condition set out in (f) above. No exemption from registration is necessary in these cases.

(h) <u>Representation on behalf of public trusts for reducing the rate of contribution from 2 P.C. to 1 P.C.</u> :- The rate of contribution chargeable should be 1 P.C. in the first instance with liberty to Government to Collect a further sum not exceeding 1% if Government considers it necessary to do so. Donations in any year whether directed towards the income or the corpus should be exempted from payment of contribution.

3. The question of exemption of (i) Roman Catholic Church and other churches and institutions (ii) Trust of the nature of Navjeevan trust, Shree Mahadevbhai Desai Trust, Shrimati Peoples Education Trust and Hind Seva Trust and (iii) Trust of all India operation like Kasturba Trust is still under consideration. In the meanwhile Charity Commissioner is requested to put up proposals for amendment of the Act and the rules for implementing the proposals set out in para 2 above.

10th January 1953.

d/- P. N. Lad.
Secretary to Government.

N.V.D.
13/6
40.

U.O. to C.C.'s Office No. 643/E, dated the 10th January 1953.